

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

YAKIMA POLICE PATROLMAN'S
ASSOCIATION, a Washington labor
organization; and GEOFF
GRONEWALD,

Plaintiffs,

v.

CITY OF YAKIMA, a municipal
corporation; DOMINIC RIZZI, JR.,
individually and in his official capacity
as Chief of Police of the City of
Yakima; and TAMMY REGIMBAL,
individually and in her official capacity
as Public Records Officer of the City of
Yakima; and JOHN LACROSSE,

Defendants.

NO: 14-CV-3045-TOR

ORDER DENYING PLAINTIFFS'
SECOND MOTION FOR A
TEMPORARY RESTRAINING
ORDER

BEFORE THE COURT is Plaintiffs' Second Motion for a Temporary

Restraining Order (ECF No. 9). This matter was heard with oral argument on
April 18, 2014. Mitchell Riese appeared on behalf of the Plaintiffs. James

1 Mitchell appeared on behalf of Defendants City of Yakima, Dominic Rizzi, and
2 Tammy Regimbal. Neither John LaCrosse nor the Washington State Attorney
3 General appeared. The Court has reviewed the briefing and the record and files
4 herein, and is fully informed. This order memorializes the Court's oral ruling
5 during the hearing.

6 **BACKGROUND**

7 This case concerns a public records request for information pertaining to an
8 investigation of a Yakima Police Department officer's alleged misconduct.
9 Plaintiffs Yakima Police Patrolman's Association ("YPPA") and Geoff Gronewald
10 seek a temporary restraining order preventing the release of the records before the
11 officer's pre-disciplinary/name-clearing hearing. For the reasons explained below,
12 the Court denies the request.

13 **FACTS¹**

14 Plaintiff Yakima Police Patrolman's Association ("YPPA") is a labor
15 organization representing police officers of the Yakima Police Department. Geoff
16
17

18 ¹ The following facts are primarily drawn from Plaintiff's complaint and are
19 accepted as true for the purposes of the instant motion. Defendants did not file any
20 responsive briefing.

1 Gronewald is a police officer employed by the City of Yakima Police Department
2 (“YPD”).

3 Gronewald was notified on February 25, 2014, that he was the subject of a
4 YPD internal investigation into allegations of misconduct, and he was placed on
5 administrative leave. Gronewald was notified on April 10, 2014, that he was to
6 appear before Defendant Dominic Rizzi, Jr., the YPD Chief of Police, on May 13,
7 2014, for a pre-disciplinary/name-clearing hearing concerning allegations of
8 violations of YPD policy. Gronewald was informed that the disciplinary action
9 contemplated could include termination, and that the hearing would allow
10 Gronewald to “present matters of refutation, explanation and/or mitigation.”

11 On March 19, 2014, Defendant LaCrosse submitted a public records request
12 to Defendant Tammy Regimbal, the Public Records Officer for the City of
13 Yakima, requesting any and all information regarding Gronewald’s administrative
14 leave, including any investigation surrounding his leave. Regimbal notified
15 Gronewald of the request.

16 On April 14, 2014, the YPPA filed a complaint and motion for a temporary
17 restraining order prohibiting release of the records. At a hearing on April 16, 2014,
18 the Court denied the motion for a TRO with leave to renew. The same day,
19 Plaintiff filed a First Amended Complaint and the Second Motion for a Temporary
20 Restraining Order now before the Court, adding as plaintiff Geoff Gronewald and

1 as defendant John LaCrosse, the member of the press who requested the
2 documents.

3 Plaintiff's Second Amended Complaint claims that information contained in
4 the investigative file contains stigmatizing information about Gronewald, the
5 release of which could cause immediate and irreparable harm because it could
6 impair Gronewald's reputation for honesty or morality. Plaintiff sues pursuant to
7 42 U.S.C. § 1983, claiming that releasing the investigative file before Gronewald
8 has his predisciplinary/name-clearing hearing violates Gronewald's Fourteenth
9 Amendment liberty interest in remaining free from the public dissemination of
10 stigmatizing information by his employer. Plaintiff states that Defendants believe
11 they are obligated by the Washington Public Records Act ("PRA"), RCW 42.56, to
12 disclose the records requested by Defendant LaCrosse without first providing
13 Plaintiff Gronewald a pre-disciplinary/name-clearing hearing, and that in the future
14 Defendants would be similarly obligated to disclose the records of other YPPA
15 members without first providing a pre-disciplinary/name-clearing hearing for the
16 officer involved. Plaintiffs' Second Amended Complaint also claims that the PRA
17 is unconstitutional as applied to Plaintiff Gronewald to the extent that the statute
18 allows Defendants to disclose stigmatizing information regarding Plaintiff
19 Gronewald without first affording him a pre-disciplinary/name-clearing hearing.
20

1 Plaintiffs filed a notice of constitutional challenge to the PRA, and a Constitutional
 2 Challenge Certification was sent to the Washington Attorney General.

3 Plaintiffs pray for a temporary restraining order and preliminary injunction
 4 enjoining the release of any portion of the investigative file concerning Gronewald
 5 until he has had a pre-disciplinary/name-clearing hearing.

6 DISCUSSION

7 “An application for a temporary restraining order involves the invocation of
 8 a drastic remedy which a court of equity ordinarily does not grant, unless a very
 9 strong showing is made of a necessity and desirability of such action.” *Youngstown*
 10 *Sheet & Tube Co. v. Sawyer*, 103 F.Supp. 978, 980 (D.D.C.1952). The standard for
 11 granting a temporary restraining order “is identical to the standard for issuing a
 12 preliminary injunction.” *Brown Jordan Intern. v. Mind's Eye Interiors, Inc.*, 236
 13 F.Supp.2d 1152, 1154 (D .Hawai'i 2002). Pursuant to Rule 65 of the Federal Rules
 14 of Civil Procedure, the Court may grant preliminary injunctive relief in order to
 15 prevent “immediate and irreparable injury.” Fed.R.Civ.P. 65(b).

16 To obtain this relief, a plaintiff must establish that (1) he is “likely to
 17 succeed on the merits,” (2) he is “likely to suffer irreparable harm in the absence of
 18 preliminary relief,” (3) “the balance of equities tips in his favor,” and (4) “an
 19 injunction is in the public interest.” *Winter v. Natural Res. Def. Council*, 555 U.S.
 20 7, 20 (2008). The Ninth Circuit uses a “sliding scale” under which the temporary

1 restraining order may be issued if there are serious questions going to the merits
2 and the balance of hardships tips sharply in the plaintiff's favor, along with
3 satisfaction of the two other *Winter* factors. *Alliance for the Wild Rockies v.*
4 *Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).

5 Plaintiff cites *Cox v. Roskelley*, 359 F.3d 1105, 1106 (9th Cir. 2004) for the
6 proposition that “publication of stigmatizing information without a name clearing
7 hearing violates due process,” and that publication can occur when a records are
8 placed in a personnel file. ECF No. 2 at 5. Plaintiff contends that Defendants
9 intended to publish stigmatizing information without affording Gronewald a name-
10 clearing hearing to which he is entitled. As such, Plaintiff argues, it has shown that
11 it is likely to succeed in the matter.

12 The Fourteenth Amendment's guarantee of procedural due process applies
13 when a constitutionally protected property or liberty interest is at stake. *See Vanelli*
14 *v. Reynolds Sch. Dist. No. 7*, 667 F.2d 773, 777 (9th Cir. 1982). Where the State
15 seeks to bar forever an individual from public employment, makes a charge of
16 “dishonesty,” or attaches a “stigma” to an employment decision, it must afford due
17 process. *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 573 (1972). But
18 mere harm to reputation alone is insufficient to implicate an individual’s liberty
19 interest. *Paul v. Davis*, 424 U.S. 693, 711-712 (1976). “[D]ue process protections
20 will apply if 1) the accuracy of the charge is contested; 2) there is some public

1 disclosure of the charge; and 3) it is made in connection with the termination of
2 employment or the alteration of some right or status recognized by state law.”
3 *Llamas v. Butte Cnty. Coll. Dist.*, 238 F.3d 1123, 1129 (9th Cir. 2001). “Failure to
4 provide a “name-clearing” hearing in such a circumstance is a violation of the
5 Fourteenth Amendment’s due process clause.” *Cox v. Roskelley*, 359 F.3d 1105,
6 1110 (9th Cir. 2004). Placing the stigmatizing information in the employee’s
7 personnel file, “in the face of a state statute mandating release upon request,
8 constitute[s] publication sufficient to trigger [the employee’s] liberty interest under
9 the Fourteenth Amendment.” *Cox*, 359 F.3d at 1112. In such a case, “[t]he lack of
10 an opportunity for a name-clearing hearing [would violate a plaintiff’s] due process
11 rights.” *Id.*

12 Here, there is simply no threatened Constitutional violation. Plaintiffs have
13 failed to meet two of the three criteria triggering due process protection. Assuming
14 that the information is in fact stigmatizing, which is not apparent from the record,
15 its placement in Gronewald’s personnel file would be sufficient publication for the
16 purposes of invoking due process protections. But Gronewald has not yet been
17 terminated; he is on administrative leave. This is insufficient to invoke due process
18 protections. *See Mustafa v. Clark County School District*, 157 F.3d 1169, 1179
19 (9th Cir. 1998) (citing *In re Selcraig*, 705 F.2d 789, 795 (5th Cir. 1983) (“official
20 publication of a stigmatizing charge...without discharge is not of itself

1 constitutionally prohibited"). "A constitutional deprivation of liberty occurs when
2 there is *some injury to employment or employment opportunities* in addition to
3 damage to reputation and a subsequent denial of procedural due process to redress
4 that injury." *In re Selcraig*, 705 F.2d at 796 (emphasis added). Gronewald has not
5 suffered an injury to employment yet, and therefore the third prong of the test has
6 not been met.

7 Furthermore, even if the stigmatizing information had been published in
8 connection with termination, Gronewald would be entitled to due process, namely,
9 a name-clearing hearing. Gronewald has a name-clearing hearing scheduled on
10 May 13, 2014. Thus, there is no threatened constitutional violation. As the
11 Supreme Court put it, "[d]efamation, by itself, is a tort actionable under the laws of
12 most States, but not a constitutional deprivation." *Siegert v. Gilley*, 500 U.S. 226,
13 233-234 (1991).

14 Having found no legal basis for the constitutional challenge, the request for a
15 temporary restraining order founded on constitutional violations must be denied,
16 even under the Ninth Circuit's "sliding scale" analysis. If there is no constitutional
17 deprivation, the balance of equities does not tip sharply in Gronewald's favor
18 because there is no constitutional right to protect. Nor, arguably, is it in the public
19 interest to prohibit release of the information, because, at least in theory, the
20 records contain information of concern to the public. See RCW 42.56.050 ("A

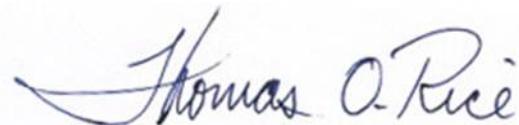
1 person's 'right to privacy'...is invaded or violated only if disclosure of information
2 about the person: (1) Would be highly offensive to a reasonable person, and (2) is
3 not of legitimate concern to the public.").

4 **ACCORDINGLY, IT IS HEREBY ORDERED:**

5 Plaintiffs' Second Motion for a Temporary Restraining Order (ECF No. 9) is
6 **DENIED.**

7 The District Court Executive is hereby directed to enter this Order and
8 provide copies to counsel.

9 **DATED** April 18, 2014.



Thomas O. Rice
THOMAS O. RICE
United States District Judge

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